

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

ALBERTO OVALLE,

Plaintiff,

v.

UNITED RENTALS
(NORTH AMERICA), INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

**CIVIL ACTION
NO. 2:18-cv-00211-D-BR**

JURY TRIAL DEMANDED

PLAINTIFF, ALBERTO OVALLE'S THIRD AMENDED EXHIBIT LIST

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to this Court's order, *see* Rec. Doc. 66, and to Rule 26(a)(3), Plaintiff, Alberto Ovalle, files this Exhibit List, and will respectfully shows the Court as follows:

NO.	DESCRIPTION	OFFERED	OBJECTION / DENIED	AGREED / ADMITTED
1.	Time Sheet URI 00458			X
2.	Incident Report Dated: 3/28/2017 (3 pages) URI 00248 - URI 00250			X
3.	Initial Urgent Care Visit Report Dated: 4/3/2017 from BSA Urgent Care Center (5 pages) URI 002203 - URI 002207 URI.10296			X
4.	Deposition by Written Questions of American Medical Response for EMS records Dated: 4/3/2017 (21 pages) OVALLE0000001803-OVALLE0000001823			X
5.	CT of Lumbar Spine Report Dated: 4/3/2017 from BSA Health System (2 pages) URI 002168 - URI 002169 URI.10296			X
6.	MRI of Lumbar Spine Report Dated: 4/7/2017 from BSA Health System (1 page) URI 001852 URI.10296			X
7.	Operative Report Dated: 4/7/2017 from BSA Health System (3 pages) URI 001550 - URI 001552 URI.10296			X
8.	Handwritten Progress Note Dated: 4/8/2017 from Dr. Errington at BSA Health System (1 page)			X

NO.	DESCRIPTION	OFFERED	OBJECTION / DENIED	AGREED / ADMITTED
	URI 001137 URI.10296			
9.	Initial Note Dated: 4/19/2017 from Dr. Veggberg at BSA Health System (2 pages) URI 000666 - URI 000667 URI.10296			X
10.	X-Ray of Lumbar Spine Report Dated: 7/10/2017 from Advanced Imaging Center of Amarillo (1 page) URI 000487 URI.10296			X
11.	X-Ray of Lumbar Spine Report Dated: 2/1/2018 from Advanced Imaging Center of Amarillo (1 page) URI 000492 URI.10296			X
12.	Progress Note Dated: 6/4/2019 from Amarillo Family Physicians Clinic (5 pages) URI 000590 - URI 000594 URI.10296		Defendant objects to URI.000591 because the opinions set forth do not meet the requirements of FED R. 702. Defendant further objects this record is irrelevant and serve no purpose other than to confuse the jury. FRE 401, 403	
13.	Report Dated: 10/3/2019 from Dr. Errington at Southwest Neuroscience & Spine Center (3 pages) URI 002617 – URI 002619 URI.10296			X
14.	Ovalle's 2016 Performance Review (5 pages) URI 00106 - 00110			X
15.	Ovalle's 2017 Performance Review (5 pages) URI 00111 - 00115		Pursuant to FED. R. 602, Defendant objects to URI.00111 as the offering witness lacks personal knowledge of the information being offered.	

NO.	DESCRIPTION	OFFERED	OBJECTION / DENIED	AGREED / ADMITTED
			No evidence has been offered or introduced that is sufficient to support a finding the witness has personal knowledge of the testimony.	
16.	Claimant statement Dated: 4/17/2017 (2 pages) URI 00116 - 00117			X
17.	Photographs (9 photos) URI 00128 - 00136		Defendant objects to photographs URI.00128-00132. These photos are irrelevant and serve no purpose other than to confuse the jury. FRE 401, 403. Defendants further object that the exhibits are not properly authenticated. FRE 901.	
18.	Incident Reporting PPT (6 pages) URI 00251 - URI 00256			X
19.	Incident Reporting PPT (5 pages) URI 00137 - URI 00141			X
20.	Exhibit 1 (<i>Photo Art of Spine</i>) of Brett D. Errington's Deposition taken on 4/17/2020 (1 page)			X
21.	Exhibit 2 (<i>Medical Records</i>) of Brett D. Errington's Deposition taken on 4/17/2020 (71 pages)			X
22.	Exhibit 3 (<i>Medical Records</i>) of Brett D. Errington's Deposition taken on 4/17/2020 (26 pages)			X
23.	Exhibit 4 (<i>Radiology Photos of Spine</i>) of Brett D. Errington's Deposition taken on 4/17/2020 (3 pages)			X

NO.	DESCRIPTION	OFFERED	OBJECTION / DENIED	AGREED / ADMITTED
24.	Exhibit 5(<i>Medical Records</i>) of Brett D. Errington's Deposition taken on 4/17/2020 (13 pages)			X
25.	Exhibit 6 (<i>BSA Admission Record</i>) of Brett D. Errington's Deposition taken on 4/17/2020 (2 pages)			X
26.	Exhibit 2 (<i>United Rentals Monthly Training Toolbox</i>) of Karabanoff's Deposition taken on 8/12/2019 (5 pages)			X
27.	Exhibit 3 (<i>Monthly Training Toolbox – August 2016</i>) of Karabanoff's Deposition taken on 8/12/2019 (2 pages)			X
28.	Exhibit 4 (<i>United Rentals Policies and Procedures Bulletin 2EE06</i>) of Karabanoff's Deposition taken on 8/12/2019 (8 pages)			X
29.	Exhibit 5 (<i>United Rentals Policies and Procedures Bulletin 2EE02</i>) of Karabanoff's Deposition taken on 8/12/2019 (5pages)			X
30.	Exhibit 6 (<i>United Rentals – Incident Investigation Report</i>) of Karabanoff's Deposition taken on 8/12/2019 (3 pages) DUPLICATE TO EX. 3			X
31.	Exhibit 7 (<i>United Rentals – Patient Interview – 4/13/17</i>) of Karabanoff's Deposition taken on 8/12/2019 (2 pages)			X
32.	Exhibit 8 (<i>Defendant's Supplemental Answers to Plaintiff's First Set of Interrogatories</i>) of Karabanoff's Deposition taken on 8/12/2019 (8 pages)		Defendant objects as this is an improper exhibit. Defendant further objects as hearsay, is irrelevant and serve no purpose other than to confuse the jury. FRE 401, 403, 802.	
33.	Ken McCain Report OVALLE00000001997-OVALLE00000002000		Defendant objects to this Exhibit as hearsay and more prejudicial than probative. FRE 802.	
34.	Ken McCain Resume OVALLE00000002002-OVALLE00000002004		Defendant objects to this Exhibit as	

NO.	DESCRIPTION	OFFERED	OBJECTION / DENIED	AGREED / ADMITTED
			hearsay and more prejudicial than probative. FRE 802.	
35.	Jason English Report OVALLE00000002165-OVALLE00000002181		Defendant objects to this Exhibit as hearsay and more prejudicial than probative. FRE 802.	
36.	Jason English CV OVALLE00000002182-OVALLE00000002192		Defendant objects to this Exhibit as hearsay and more prejudicial than probative. FRE 802.	
37.	Demonstrative Aids			
38.	Certified Weather Records			
LEARNED TREATISES AND DEMONSTRATIVES				
39.	American National Standards Institute. ANSI A1264.2 - <i>Provision of Slip Resistance on Walking/Working Surfaces</i> , 2012.			
40.	ASTM International. F 1637 - <i>Standard Practice for Safe Walking Surfaces</i> , 2013.			
41.	ASTM International. F 1646 - <i>Standard Terminology Relating to Safety and Traction for Footwear</i> , 2005.			
42.	Di Pilla, Steven. <i>Slip, Trip, and Fall Prevention: A Practical Handbook</i> , 2nd Edition, 2009. pp. 71-78, 311- 333.			
43.	Di Pilla, Steven. "Walkway Surface Safety and Traction in the Workplace – the Rest of the Equation." <i>Professional Safety</i> , July 2001. pp. 25-27.			
44.	English, William. <i>Pedestrian Slip Resistance – How to Measure It and How to Improve It</i> , 2nd Edition, 2003. pp. 1-14.			
45.	Nash, James L. "Combating Industry's Costly Slips," <i>Occupational Hazards</i> , November 2001. pp. 44-46, 48			

NO.	DESCRIPTION	OFFERED	OBJECTION / DENIED	AGREED / ADMITTED
46.	Natalizia, David. "Breaking the Cycle of Slips, Trips, and Falls." <i>Occupational Health & Safety</i> , October 2007.			
47.	National Fire Protection Association. NFPA 101- <i>Life Safety Code Handbook</i> , 10th Edition, 2006. p. 122-123.			
48.	National Safety Council. <i>Falls on Floors</i> . Data Sheet I-495, Rev. March 2006			
49.	National Safety Council. <i>Floor Mats and Runners</i> . Data Sheet 595, Rev. December 2007.			
50.	Rhoads, James. "A Risk Manager's Roadmap." <i>Occupational Health and Safety</i> , September 2005. pp. 142, 144, 146.			
51.	U.S Department of Labor, OSHA, 29 CFR 1910 Subpart D – Walking-Working Surfaces.			
52.	National Safety Council, <i>Accident Facts</i> , 1998, pp. 10, 15-16, 18, 30, 32-33, 42-45, 115-116.			
53.	National Safety Council, <i>Injury Facts</i> , 2002, pp. 8-13, 24, 32-33, 42-45, 121-123.			
54.	National Safety Council, <i>Injury Facts</i> , 2008, pp. 17-20, 25-27, 33, 39-40, 49-50, 130-132, 151-152.			
55.	U.S. Department of Labor, Bureau of Labor Statistics, "National Census of Fatal Occupational Injuries in 2008," August 2009, pg. 1-13.			
56.	U.S. Department of Labor, Bureau of Labor Statistics, "Lost-Worktime Injuries and Illnesses: Characteristics and Resulting Days Away from Work, 2003," March 30, 2005.			
57.	U.S. Department of Labor, Bureau of Labor Statistics, "Nonfatal Occupational Injuries and Illnesses Requiring Days Away from Work, 2011," November 8, 2012, pp. 1, 4, 14-15, 24-25, 28-30.			
58.	American National Standards Institute. <i>American National Standard - Occupational Health and Safety Management Systems</i> , ANSI/AIHA Z10-2005.			
59.	Cullen, Lisa. <i>A Job to Die For</i> . Common Courage Press, 2002. pp. 5-9, 69.			
60.	Czerniak, John and Don Ostrander. <i>Nine Elements of Successful Safety and Health System</i> . National Safety Council Press, 2005. pp. 6-15, 22, 36, 54-70, 74-81, 86-92, 99, 124, 144, 156-162.			
61.	Gaspers, Karen. "Striving for Zero." <i>Safety + Health</i> , April 2004. pp. 30-34.			

NO.	DESCRIPTION	OFFERED	OBJECTION / DENIED	AGREED / ADMITTED
62.	Grimaldi, John V., and Rollin H. Simonds. <i>Safety Management</i> , Fifth Edition. American Society of Safety Engineers, 1989. pp. 104-105, 126-148.			
63.	Krause, T. and T. Weekley. "Safety Leadership," <i>Professional Safety</i> , November 2005. pp. 34-40.			
64.	Manuele, Fred A. <i>Innovations in Safety Management - Addressing Career Knowledge Needs</i> . Wiley & Sons, 2001. pp. 72-85.			
65.	Spellman, Frank R., and Nancy E. Whiting. <i>Safety Engineering Principles and Practices</i> , Second Edition. Government Institutes, 2005. pp. 11-13, 59-68, 555-574.			
66.	Weber, J. Owen. "Developing a Comprehensive Safety Program." <i>Professional Safety</i> , March 1992. pp. 33-38.			
67.	Williamsen, Michael M. "Six Sigma Safety," <i>Professional Safety</i> , June 2005. pp. 41-49.			
68.	U.S. Department of Labor - OSHA. "Safety and Health Management Guidelines; Issuance of Voluntary Guidelines." <i>Federal Register</i> 54:3904-3916. January 26, 1989.			
69.	U.S. Department of Labor - OSHA. <i>OSHA Fact Sheet - Effective Workplace Safety and Health Management Systems</i> . March 2008.			
70.	U.S. Department of Labor - OSHA. <i>OSHA Fact Sheet - Voluntary Safety and Health Program Management Guidelines</i> . July 2005			
71.	U.S. Department of Labor - OSHA. "Safety & Health Management Systems eTool." January 2001. < http://www.osha.gov/SLTC/etools/safetyhealth/comp1_responsibility.html >, select downloaded pages.			
72.	U.S. Department of Labor - OSHA. <i>Small Business Handbook</i> , OSHA 2209-02R, 2005. pp. 6-16.			
73.	National Safety Council. <i>Supervisors' Safety Manual</i> . Seventh Edition, 1991. pp. 1-9.			
74.	National Safety Council. <i>Accident Prevention Manual for Industrial Operations: Administration and Programs</i> , Twelfth Edition, 2001. pp. 117-124.			

Plaintiff reserves the right to use other demonstrative aides that may be created between now and the time of trial, including blow-ups or enlargements of any of the above.

Plaintiff may use documents produced by and/or requested from Defendant.

All exhibits listed by the Defendant and not ultimately objected to by Plaintiff.

All exhibits to all depositions taken in this matter, and not ultimately objected to by Plaintiff.

All exhibits produced and/or referred to in the discovery responses of any party to this matter, and not objected to by Plaintiff.

Plaintiff reserves the right to amend and/or supplement his Trial Exhibit List, following stipulations by counsel and/or rulings by the Court.

Respectfully submitted,

WILLIAMS HART BOUNDAS EASTERBY, LLP

By: /s/ Cesar Tavares

JIM S. HART
Texas Bar No. 09147400
CESAR TAVARES
Texas Bar No. 24093726
8441 Gulf Freeway, Suite 600
Houston, Texas 77017-5001
(713) 230-2200 – Telephone
(713) 643-6226 – Facsimile
pidept@whlaw.com

ATTORNEYS FOR PLAINTIFF

-and-

OBJECTIONS TO PLAINTIFF'S EXHIBITS ASSERTED BY

FEE, SMITH, SHARP & VITULLO, LLP

By: /s/Jeff C. Wright

JEFF C. WRIGHT
State Bar No. 24008306
RYAN T. FUNDERBURG
State Bar No. 24101776
Three Galleria Tower
13155 Noel Road, Suite 1000 Dallas, Texas 75240
(972) 934-9100 Telephone
(972) 934-9200 Facsimile
jwright@feesmith.com
rfunderburg@feesmith.com

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

On February 22, 2021, Plaintiff's counsel submitted the foregoing document with the clerk of court of the U.S. District Court for Northern District of Texas Amarillo Division, using the electronic case filing system of the court. Plaintiff's counsel certify that they served all counsel parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Cesar Tavares

Cesar Tavares